

BYLAWS  
OF  
OCEAN BEACH MERCHANT'S ASSOCIATION  
a California Nonprofit Mutual Benefit Corporation

ARTICLE I. OFFICES

Section 1. Principal Office. The corporation's principal office is fixed and located at 1868 Bacon St., San Diego, California 92107. The Board of Directors (herein called the "Board") is granted full power and authority to change said principal office from one location to another. Any such change shall be noted on the Bylaws opposite this section 1, or this section 1 may be amended to state the new location.

ARTICLE II. MEMBERSHIP

Section 1. Classes. The members of the corporation shall be those persons holding business tax certificates (including corporations and other associations) paying business improvement district charges assessed by the City of San Diego within the boundaries of the Ocean Beach Business Improvement District. Membership shall also be available to all parties carrying a valid business or equivalent license who have demonstrated an interest in Ocean Beach and paid dues at a rate determined by the Corporation. All such members shall have the right to vote on all matters requiring a vote of the membership of the corporation under the law, Articles of Incorporation, or these Bylaws.

Each member shall have the right to vote for the election of directors and on a disposition of substantially all of the assets of the corporation and on a merger and on dissolution. Additionally, members shall have all of the rights afforded members under California Nonprofit Mutual Benefit Corporation law.

Section 2. Good Standing. Any member who shall be in arrears in the payment of any installment of fees, periodic dues, or assessments more than 30 days after their due date shall not be in good standing and shall not be entitled to vote as a member.

Section 3. Place of Meeting. Meetings of members shall be held either at the principal office of the corporation or at any other place within or without the State of California which may be designated either by the Board or by the written consent of all persons entitled to vote thereat, given either before or after the meeting and filed with the Secretary.

Section 4. Annual Meetings. Annual meetings shall be held on such date and at such time as may be fixed by the Board. In any year in which directors are elected, the election shall be held at the annual meeting or by properly noticed ballot mailed to every member of the Association. Any other proper business may be transacted at the meeting.

Section 5. Special Meetings. Special meetings of members may be called for any lawful purpose at any time by the Board, the Chairperson of the Board, the President, or not less than 5 percent (5%) of the members. Upon request in writing to the Chairperson of the Board, the President, any Vice President, or the Secretary by any person (other than the Board) entitled to call a special meeting of members, the officer forthwith shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the Board, not less than 35 nor more than 90 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice.

Section 6. Notice of Annual or Special Meetings. Written notice of each annual or special meeting of members shall be given not less than 10 nor more than 90 days before the date of the meeting to each member entitled to notice thereof; provided, however, that if notice is given by mail, and the notice is not mailed by first class, registered, or certified mail, fax or e-mail, the notice shall be given not less than 20 days before the meeting. Such notice shall state the place, date and hour of the meeting and (a) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (b) in the case of the annual meeting, those matters which the Board, at the time of the mailing of the notice, intends to present for action by the members, but, subject to the provisions of applicable law, any proper matter may be presented at a meeting which directors are to be elected shall include the names of all those that are nominees at the time the notice is sent to members.

Section 7. Quorum. A majority of the voting power, represented in person, shall constitute a quorum at any meeting of members. If a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting, entitled to vote, and voting on any matter shall be the act of the members, unless the vote of a greater number or voting by class is required by law, by the Articles, or by these Bylaws, except as provided in the following sentence. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum.

Section 8. Voting. The members entitled to notice of any meeting or to vote at any meeting shall be only persons in whose name memberships stand on the records of the corporation on the record date for notice.

Elections need not be by ballot; provided, however, that all elections for directors must be by ballot upon demand made by a member at the meeting and before the voting begins.

In any election of directors, the candidates receiving the highest number of votes are elected. If more than one vote the act of the majority so voting binds all.

Voting shall in all cases be subject to the provisions of Chapter 6 of the California Nonprofit Mutual Benefit Corporation Law.

Section 9. Proxies. Persons entitled to vote a membership may do so only in person. Voting rights may not be exercised by proxies.

Section 10. Inspectors or Election. In advance of any meeting of members, the Board may appoint inspectors of election to act at such meeting and any adjournment thereof. If inspectors of election be not so appointed or if any persons so appointed fail to appear or refuse to act, the chairperson of any such meeting may, and on the request of any member shall, make such appointment at the meeting. The number of inspectors shall be either one or three.

Section 11. Conduct of Meeting. The President shall preside as chairperson at all meetings of the members. The chairperson shall conduct each such meeting in a businesslike and fair manner, but shall not be obligated to follow any technical, formal, or parliamentary rules or principles of procedure. The chairperson's rulings on procedural matters shall be conclusive and binding on all members unless at the time of a ruling a request for a vote is made to the members entitled to vote and which are the decision of a majority of such members shall be conclusive and binding on all members. Without limiting the generality of the foregoing, the Chairperson shall have all of the powers usually vested in the Chairperson of a meeting of members.

### ARTICLE III. DIRECTORS

Section 1. Powers. Subject to limitations of the Articles, of these Bylaws, and of the California Nonprofit Mutual Benefit Corporation Law relating to action required to be approved by the members or by a majority of members, the activities and affairs of the corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of the activities of the corporation to any person or persons, a management company, or committees however composed, provided that the activities and affairs of the corporation shall be managed and all corporate Powers shall be exercised under the ultimate direction of the Board. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board shall have the following Powers in addition to the other powers enumerated by these Bylaws:

- (a) To select and remove all the other officers, agents, and employees of the corporation, prescribe powers and duties for them as may not be inconsistent with law, the Articles, or these Bylaws, fix their compensation, and require from them security for faithful service.
- (b) To conduct, manage, and control the affairs and activities of the corporation and to make such rules and regulations therefore not inconsistent with law, the Articles, or these Bylaws, as they deem best.
- (c) To adopt, make, and use a corporate seal, and/or prescribe the form(s) of certificates of membership, and to alter the form of such seal and of such certificate(s) from time to time as they may deem best.
- (d) To authorize the issuance of memberships of the corporation from time to time, upon such terms and for such consideration as may be lawful.

(e) To borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered therefore, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecation, or other evidences of debt and securities therefore.

(f) To carry on business at a profit and apply the profit that results from the business activity to activity in which it may lawfully engage.

Section 2. Number of Directors. The authorized number of directors shall be 14 until changed by amendment of the Articles or by a Bylaw duly adopted by the members amending the section 2.

Section 3. Qualifications. Directors must be members of the Association in good standing as per Article II, Section 2. The Board shall consist of members that reflect the ethnic and business diversity of the Ocean Beach business community.

Section 4. Election and Term of Office. At an organizational meeting of the Board, following the adoption of these Bylaws, the Board shall divide its members into three equal groups, one group to hold office until the next following annual meeting of members, the second group to hold office until the second following annual meeting of members, and the third group to hold office until the third following annual meeting of members. The directors in each group shall hold office until such annual meeting and until their respective successors are elected and qualified.

At each July meeting of members, a number of directors shall be elected by the membership equal to the number of directors whose terms shall have expired at the time of such meeting.

Section 5. Vacancies. Any director may resign effective upon giving written notice to the Chairperson of the Board, the President, the Secretary, or the Board, unless the notice specifies a later time for the effectiveness at a future time. A successor may be elected before such time to take office when the resignation becomes effective.

Any director who accumulates four excused or two non-excused meetings during a term year will be removed from their directorship. Notice will be given to that director in writing by mail, fax, or e-mail. An excused absence is deemed valid if the board member notifies the board President or the President's representative by telephone or similar means before the said meeting begins.

Vacancies in the Board, except those existing as a result of a removal of a director, may be filled by a majority of the remaining directors, although less than a quorum, or by a sole remaining director, and each director so elected shall hold office until the expiration of the term of the replaced director and until such replacement director's successor has been elected and qualified.

A vacancy or vacancies in the Board shall be deemed to exist in case of the death, resignation or removal of any director, or if the authorized number of directors be increased, or if the members fail, at any regular or special meeting of members at which directors are to be elected, to elect the authorized number of directors to be voted for at that meeting.

The members may elect a director or directors at any time to fill any vacancies not filled by the directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of the director's term of office.

Section 6. Place of Meeting. Regular or special meetings of the Board shall be held at any place within or without the State of California which has been designated from time to time by the Board. In the absence of such designation, regular meetings shall be held at the principal office of the corporation.

Section 7. Regular Meetings. Members of the board shall hold regular meetings for the purpose of organization, election of officers, and the transaction of other business.

Other regular meetings of the Board shall be held on such dates and at such times as may be fixed by the Board.

Notice of regular meetings shall be posted in a publicly-accessible location and on the corporation's website, if any, not less than seventy-two hours in advance of meetings. Notices shall include the date, time, and location of the meeting, and the general nature of the business to be transacted.

Section 8. Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the Chairperson of the Board, the President, the Vice Presidents, the Secretary, or any two directors.

Special meeting of the Board shall be held upon 2 days notice by first class mail or 24 hours notice given personally or by telephone, telegraph, fax, email, or other similar means of communication. Any such notice shall be addressed or delivered to each director at such director's address as it is shown upon the records of the corporation for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held.

Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

Notice of special meetings shall also be posted in a publicly-accessible location and on the corporation's website, if any, not less than twenty-four hours in advance of meetings. Notices shall include the date, time, and location of the meeting, and the general nature of the business to be transacted.

Section 9. Quorum. A majority of the authorized number of directors constitutes a quorum of the Board for the transaction of business, except to adjourn. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number be required by law or by the Articles.

Section 10. Participation in Meetings by Conference Telephone. Teleconferencing, as authorized by §54953 of the Ralph M. Brown Act may be used for all purposes in connection with meetings. All votes taken during a teleconferenced meeting shall be by roll call. If teleconferencing is used, the Board shall post the agenda at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the Board. Each teleconference location shall be identified in the notice and agenda of the meeting, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the Board shall participate from locations within the boundaries of Ocean Beach. The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to §54954.3 at each teleconference location.

Section 11. Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any directors meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place be fixed at the meeting being adjourned, except as provided in the next sentence. If the meeting is adjourned for more than 72 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 12. Right of Inspection. Every director and member shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the corporation.

Section 13. Committees. The Board may appoint one or more committees, each consisting of two or more directors and no non-directors, and delegate to such committees any of the authority of the Board except with respect to:

- (a) The approval of any action for which the California Nonprofit Mutual Benefit Corporation Law also requires approval of the members or approval of a majority of all members;
- (b) The filling of vacancies on the Board or in any committee;
- (c) The fixing of compensation of the directors for serving on the Board or on any committee;
- (d) The amendment or repeal of bylaws or the adoption of new bylaws;
- (e) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- (f) The appointment of the committees of the Board or the members thereof;
- (g) The expenditure of corporate funds to support a nominee for director after there are more people

nominated for director than can be elected; or

(h) With respect to any assets held in charitable trust, the approval of any self-dealing transaction.

Any such committee must be created, and the members thereof appointed, by resolution adopted by a majority of the authorized number of directors then in office, provided a quorum is present, and any such committee may be designated an Executive Committee or by such other name as the Board shall specify. The Board may appoint, in the same manner, alternate members of any committee who may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall otherwise provide, the regular and special meetings and other actions of any such committee shall be governed by the provisions of this Article III applicable to meeting and actions of the board. Minutes shall be kept of each meeting of each committee.

#### ARTICLE IV. OFFICERS

Section 1. Officers. The officers of the corporation shall be a President, 1st<sup>Vice</sup> President, a 2<sup>nd</sup> Vice President, a Secretary, and a Treasurer.

Section 2. Election. The officers of the corporation, except such officers as may be elected or appointed in accordance with the provisions of Section 3 or Section 5 of this Article IV, shall be chosen annually by, and shall serve at the pleasure of, the Board, and shall hold their respective offices until their resignation, removal, or other disqualification from service, or until their respective successors shall be elected.

Section 3. Subordinate Officers. The Board may elect, and may empower the President to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

Section 4. Removal and Resignation. Any officer may be removed, either with or without cause, by the Board at any time. Any such removal shall be without prejudice to the rights, if any, of the officer under any contract of employment of the officer.

Any officer may resign at any time by giving written notice to the corporation, but without prejudice to the rights, if any, of the corporation, under any contract to which the officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular election or appointment to such office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 6. President. Subject to such powers, if any as may be given by the Board to the Chairman of the Board, if there be such an officer, the President is the general manager and chief executive officer of the corporation and has, subject to the control of the Board, general supervision, direction, and control of the business and affairs of the corporation. The President shall preside at all meetings of the members and, in the absence of the Chairman of the Board, or if there be none, at meetings of the Board. The President has the general powers and duties of management usually vested in the office of president and general manager of a corporation and such other powers and duties as may be prescribed by the Board.

Section 7. 1<sup>st</sup> and 2<sup>nd</sup> Vice Presidents. In the absence or disability of the President, the 1<sup>st</sup> vice President shall perform all the duties of the President and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The 1<sup>st</sup> Vice President shall have all the powers and perform such other duties as from time to time may be prescribed for them respectively by the Board. In the absence or disability of the President and the 1<sup>st</sup> Vice President, the 2<sup>nd</sup> Vice President shall perform all the duties of the President and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The 2<sup>nd</sup> Vice President shall have all the powers and perform such other duties as from time to time may be prescribed for them respectively by the Board.

Section 8. Secretary. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board may order, a book of minutes of all meetings of members, the Board, and its committees, with the time and

Ocean Beach Merchant's Association Bylaws

place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, the number of members present or represented at members' meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal office in the State of California the original or a copy of the corporation's Articles and Bylaws, as amended to date.

The Secretary shall give, or cause to be given, notice of all meetings of the members and of the Board and any committees thereof required by these Bylaws or by law to be given, shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board.

Section 9. Treasurer. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the corporation, and shall send or cause to be sent to the members of the corporation such financial statements and reports as are by law or these Bylaws required to be sent to them. The books of account shall at all times be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the corporation as may be ordered by the Board, shall render to the President and the directors, whenever they request it, an account of all transactions as Treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board.

ARTICLE V. OTHER PROVISIONS.

Section 1. Inspection of Articles and Bylaws. The corporation shall keep in its principal office in the State of California the original or a copy of its Articles and of these Bylaws as amended to date, which shall be open to inspection by members at all reasonable times during office hours. If the corporation has no office in the State of California, it shall upon the written request of any member furnish to such member a copy of the Articles or Bylaws as amended to date.

Section 2. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the General Provisions of the California Nonprofit Mutual Benefit Corporation Law shall govern the construction of these Bylaws.

Section 3. Amendments. These Bylaws may be amended or repealed by approval of the members or by the approval of the Board; provided, however, that members must approve any action that would materially and adversely affect the rights of members.

Section 4. Insurance. The corporation shall have power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent's status as such whether or not the corporation would have the power to indemnify the agent against such liability.

CERTIFICATE OF SECRETARY

Of

OCEAN BEACH MERCHANT'S ASSOCIATION, INC.

A California nonprofit mutual benefit corporation

I hereby certify that I am the duly elected and acting Secretary of said corporation and that the foregoing Bylaws, comprising 6 pages, constitute the (amended) Bylaws of said corporation as duly adopted at a meeting of the Board of Directors thereof held on June 13, 2013.

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Secretary, Ocean Beach Merchant's Association